

STATE OF WISCONSIN : CIRCUIT COURT : ROCK COUNTY

DSD DISTRIBUTORS, INC.,

Plaintiff,

v.

Case No. 07-CV-1120

Code No(s).

HANSEN BEVERAGE COMPANY, WISCONSIN
DISTRIBUTORS SOUTH, LLC, and RIVER CITY
DISTRIBUTING CO., INC.,

Defendant.

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS OR STAY THIS
ACTION PENDING ARBITRATION OR LITIGATION IN ANOTHER FORUM AND
ADDITIONALLY TO VACATE TEMPORARY RESTRAINING ORDER**

TO: Julie A. Lewis, Esq.
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Attorneys for Plaintiff

Defendants, by their undersigned counsel, pursuant to Wis. STATS. §788.02 and § 801.63, hereby move this Court for an Order dismissing or staying this action pending arbitration or to permit adjudication in a prior action pending in a foreign forum and, additionally, to dissolve the *ex-parte* Temporary Restraining Order granted to Plaintiff, DSD Distributors, Inc., on July 23, 2007. This Motion is scheduled to be heard at 10:00 A.M. on July 31, 2007, in Branch 5 of Rock County Circuit Court before the Honorable John W. Roethe, Circuit Court Judge. Hansen and DSD have a binding arbitration agreement regarding the merits of DSD's claims in this action and there is a pending arbitration between the parties in California. In addition, there is a prior federal court action pending between DSD and Hansen in the United States District Court for the Central District of California about the arbitrability of the parties' disputes, and in which Hansen is

seeking injunctive and declaratory relief. DSD filed this lawsuit in Wisconsin only after the California federal court denied its motion to dismiss on jurisdictional grounds. This Court should not permit DSD to circumvent its arbitration agreement and the federal lawsuit in California by allowing it to invoke a third forum to hear these disputes.

In addition, and regardless of whether this action is dismissed or stayed, this Court should dissolve the *ex parte* TRO granted to DSD, as it goes far beyond its rights under the parties' Distribution Agreement, or even under the Wisconsin Fair Dealership Law.¹ DSD has used an *ex parte* procedure to alter dramatically the status quo, not preserve it, and at a potentially serious cost to the Defendants and Hansen's other authorized distributors, as well as the public generally. DSD's requested TRO should be dissolved in its entirety.

This Motion is supported by the record currently before the Court, as well as the accompanying Brief and Affidavit of Rodney C. Sacks.

Dated this 27th day of July, 2007.

Respectfully submitted,

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¹Hansen does not concede that DSD is entitled to WFDL protection.

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